

REMARKS

I. THE REJECTIONS BASED ON KESSLER

Reconsideration is respectfully requested of the rejection of claims 1-4, 6-9, 11-14, 19 and 21 under 35 USC §103 as unpatentable over Kessler (US-A-3,736,599). Reconsideration is also respectfully requested of the rejection of claims 10 and 15 under 35 USC §103 as unpatentable over Kessler in view of Glonek.

Applicant respectfully submits that the correlation proposed in the office action between the elements of the claims and the elements of the Kessler reference is untenable. The PTO has misconstrued the claims and based the rejection based on an illogical application of Kessler to the claims.

Kessler teaches a swimming pool construction having a plurality of sidewalls 3 and illustrates, but does not describe, vertical T-shaped elements extending outwardly from the back of a sidewall. The sidewalls are attached to each other by a tongue-and-groove arrangement, which provides play between adjacent sidewalls. (Column 1, lines, 42-46.) The sidewalls are placed into an angular relationship by interlocking member 19, which is preferably triangular and includes a tongue-and-groove arrangement to allow connection to adjacent sidewalls. The bottom of the assembled sidewalls is received in a bottom rail member 31, and the upper edge is received in a frame 49. The bottom rail member and the upper edge are placed in compression against a side wall by a gripping rod 61.

An important feature of the Kessler construction is that the interlocking member 19 initially allows play between adjacent panels 3. Kessler states at column 1, lines 5 and 6 that the interlocking side wall members are "each movable relative to the other members after installation." This movable feature is provided by a "purposefully poor fit" between the tongues and grooves of the sidewalls, and the ultimate configuration is not known until the pool is filled with water and the pressure of the water pushes the tongues against the grooves to provide "a locking arrangement." (Column 1, lines 46-50.) Thus, the interlocking member 19 permits adjacent wall panels to move with

respect to each other before water pressure is applied to the sidewalls and locks the sidewalls together only after water pressure is applied.

In contrast to the construction described by Kessler, the present invention provides a liquid retaining wall where two adjacent panels are held together by an assembly means that allows the two panels to move angularly with respect to each other. The invention further comprises a low belt that supports the panels and comprises two consecutive low section members, and a high belt that is fitted to the panels and comprises two consecutive high section members. The angle between the two panels is determined by angle-determining means comprising a plane part with two horizontal arms mounted on respective consecutive section members of the low and/or high belt.

Thus, among other differences described in detail below, Kessler teaches a construction where the angle between the panels is intentionally not determined until the pool is filled with water, while applicant claims a system where the angle between adjacent panels is positively determined by angle-determining elements that are plane parts with two horizontal arms that are mounted to consecutive sections of the low or high belts. Nothing in Kessler or any other art of record provides any reason to redesign the structure of Kessler to provide the invention as now claimed.

A. The Assembly Means of Claim 1

The examiner asserts in the office action that the gripping rod 61 of Kessler corresponds to the assembly means recited in claim 1. The recitation of the assembly means in claim 1 is presented pursuant to 35 USC §112, 6th paragraph and is to be construed to read on the structure shown in the drawings as element 10, which comprises an internal member 12 and an external member 14, and its equivalents. The recited assembly means holds two consecutive panels together and allows one to move angularly with respect to the other.

In contrast, the rod 61 of Kessler cannot correspond to the claimed assembly means because, in addition to the reason set forth below, it does not hold two adjacent panels together. The disclosed purpose of the rod 61 of figure 5 is only to place the

upper frame 49 and the bottom rail 31 in compression against the side wall 3 *to lock the frame and rail together on a single panel 3.*

In addition, nowhere does Kessler disclose that the rod 61 is located anywhere with respect to the panels that would lead to any inference that it plays any role in the relative motion of the panels. The portion of the disclosure at column 1, lines 1-10 referenced in the office action is merely a reference to the poor fit of the tongue-and-groove structure as described in column 1, lines 42-46, not rod 61. The examiner asserts that rod 61 allows one of two consecutive panels 3 to rotate relative to the other, but Kessler makes no mention of that feature with respect to rod 61. Because the only disclosed function of rod 61 is to place the frame and bottom rail in compression against the sidewall, applicant submits that it simply does not perform the function ascribed to it by the examiner any more than any other feature of the Kessler construction "allows" angular motion of a panel because it does not prevent it.

Thus, the locking rod 61 cannot correspond to the assembly means recited in claim 1 because it does not assemble two sidewalls of Kessler together and is not a feature of Kessler that allows the panels to move slightly angularly relative to one another.

B. Angle Determining Means

Angle determining means 40 are shown in figures 4 and 7 of the instant application and are mounted to the low or high belts to determine the angle between two consecutive section members. The examiner asserts that the angle-determining means recited in claim 1 reads on the interlocking member 19 of Kessler, which is erroneous.

As noted earlier, Kessler states that its tongue-and-groove arrangement provides play, whereby the size and shape of the wall elements are not critical. That can only mean that the interlocking member 19 does not ensure that the two consecutive panels are at a "determined angular orientation" as required by claim 1. Kessler actually teaches away from the recited structure because the angular relationship between the wall elements is random due to the loose fit between the tongue and groove, which is not made firm until the pool is filled with water. The interlocking member 19 of Kessler

cannot, therefore, ensure that two consecutive panels are at a determined angle by shaping the angle between them.

Moreover, even if the examiner's position that the interlocking member does determine the angle between the panels were accepted for purposes of argument, the interlocking element 19 still fails to teach the recited angle determining means because it does not ensure the angular orientation of the consecutive panels "as a function of the outline of the wall to be made," or "shape the angle between said two consecutive panels." The interlocking member 19 directly connects two consecutive panels and, according to the examiner, therefore determines the angle of the panels without regard to whether they are able to move angularly relative to one another. There is no shaping of the angle to be done, as required by the claims, because the panels can't move with respect to each other in the first place.

Applicant submits as well that the office action presents a contradiction because the interlocking member 19 *either opposes any relative angular movement* between both consecutive panels (if it is to correspond to the angle-determining means), thus meaning that there is no assembly means as required by claim 1 because there is no angular motion, *or the interlocking member 19 allows variations in this angle and contradicts the angle determining function*, meaning that there is no angle-determining means. Claim 1 requires both an assembly means to hold the panels together and allow angular motion between them and angle-determining means mounted to the low or high belts to form a determined angle between the panels.

Furthermore, the so-called angle-determining means (19) of the Kessler reference does not present two arms respectively mounted on two consecutive section members of the low belt and/or of the high belt because the low belt 31 is not connected to member 19 according to figures 4 and 5, or on the high belt 41, 45, which is not even divided into separated consecutive section members according to figure 5 but serves only as a single and common frame for the coping 41 as well explained in column 3, lines 46-61.

The interlocking member of Kessler is an elongate, three-dimensional member that teaches away from the angle-determining means recited in amended claim 1. As recited in claim 1, the angle-determining means are planar and present two horizontal

arms that are mounted on two consecutive section members to form the determined angle and to shape the angle between the two consecutive panels, as discussed above. The arms A and B shown in the office action extend vertically, not horizontally and have nothing to do with the angle-determining means recited in claim 1.

C. Stiffening Means

Claim 1 also recites stiffening means, which is disclosed to be concrete "b" (figure (see figures 4 and 6) but which may be other materials. The stiffening means is placed in the gutters after the panels have been assembled, to stiffen the two consecutive panels "once they have been assembled to one another."

The office action proposes that the T-shaped portions of the attached to the panels correspond to this stiffening means, and applicants submit that this is an error. The T-shaped portions referenced in the office action do not stiffen two consecutive panels after they have been assembled to each other. If anything, these portions merely stiffen an individual panel irrespective of whether it is assembled to another panel and independent of another panel. Thus, they do not stiffen two consecutive panels after assembly.

D. Two Consecutive Section Members

The examiner states at the bottom of page 3 that the prior art does not disclose a plurality of high and low members but that it would have been obvious because that is a mere duplication of parts.

The claims do not recite "a plurality of high and low members." They recite a low belt and a high belt, wherein each belt comprises two consecutive section members (formerly a "plurality") and wherein an angle-determining means is mounted on these two consecutive section members to form a determined angle between two panels. Thus, it is submitted that the two consecutive section members are not mere duplications of each other because they cooperate with each other to determine the angular relationship of the panels by way of the angle determining means.

Moreover, it appears that the office action is contradictory because the failure of Kessler to disclose the plurality of "high and low members" means that it also cannot

disclose an angle-determining means having two arms respectively mounted on the two consecutive section members of the low belt and/or of the high belt.

II. THE REJECTIONS BASED ON MAUPAS

Reconsideration is respectively requested of the rejection of claims 1, 16, and 17 under 35 USC §103(a) as unpatentable over Maupas (US-A-S 896 715).

Reconsideration is also requested of the rejection of claim 18 under 35 USC §103 as unpatentable over Maupas in view of Davis.

Maupas discloses a system for assembling prefabricated panels, an important feature of which is the system 5 to mount adjacent panels to each other. The system 5 is disclosed to be a "wedging type of assembly obtained by matching shapes between the two adjacent flanges 3 of the two panels and two rectilinear section members comprising respectively an external section member 7 and an internal section member 9." See, column 3, lines 43-47. The angles of the sides 9a and 9b of the internal member are the same as the angle between the sides of the groove 11 in the external member whereby the wall may be assembled by inserting the flanges of the panels into the groove 11 and then guiding the second member 9 into the groove 11. The assembly steps are set forth at column 4, lines 3-19.

As discussed above, the invention provides an assembly means that holds two panels together while allowing them to move angularly with respect to each other. The final configuration of the panels is determined by a low belt means determines the angle between the two panels.

A. The Assembly Means

The office action takes the position that the assembly means reads on the external section member 7 of Maupas, but only before the two members 7 and 9 have been assembled. Thus, the office action appears to acknowledge that the system 5 of Maupas, as disclosed, does not hold the two panels together and allow them to rotate with respect to each other. Because the "assembly means" limitation of claim 1 must be construed to read on element 10 and its equivalents (as discussed above), the examiner must be implying that external section member 7 of Maupas *by itself* is either

identical to the disclosed element 10 or equivalent to it. Moreover, the examiner must be implying that it would have been obvious to modify the system 5 of Maupas to eliminate the second section member 9. None of these positions is supportable.

Nothing in the Maupas disclosure suggests in any way that the first section member 7 is capable of holding the two consecutive panels together as proposed in the office action. To the contrary, it is clear from the description in column 4 of the assembly of the panels 1 with the two section members 7 and 9 that member 7 is incapable of holding the two panels together by itself. The panels are loose until the second section is inserted, which means that they are not held together until then. Of course, at that point, they cannot be rotated with respect to each other, which fact indicates that the structure disclosed by Maupas is not identical or equivalent to the claimed assembly means.

Moreover, it would not have been obvious to eliminate the second section member of Maupas because that would ruin the Maupas structure for its intended purpose and would not produce the claimed invention. The "assembly" as proposed would simply fall apart.

The system 5 of the wall of Maupas does not hold together two consecutive panels while allowing one of them to move angularly relative to the other about a vertical axis. In fact, the assembly means of Maupas is designed to maintain the two consecutive panels 1 in alignment with one another in a blocked position, as explicitly said in column 4, lines 13-16 and lines 24-29.

B. The Low and High Belts and the Angle Determining Means

The wall system of Maupas drawings maintains the linear orientation of the walls by the system 5 described above. Maupas does not have a low belt or a high belt as recited in claim 1, because Maupas does not disclose a plurality of section members for a low belt and high belt. The stiffening part 30 cannot be considered in any way to form these section members because it is a single block (column 5, line 53), and no angle-determining means mounted on consecutive section members of the of a low or high belt are provided for ensuring that both consecutive panels are at a determined angular orientation relative to each other. The reinforcing strut 20, which the examiner identifies

as the recited angle-determining means does not comprise *two arms M and N* respectively *mounted on these two consecutive either low or high section members*. Instead, Maupas specifically teaches that the reinforcing strut 20 is attached to the "back of the first section members 7." To this end, a groove 22 may be formed in first section member to receive the strut 20. See, column 4, line 64 to column 5, line 1. The element 20 (figure 7) of Maupas is merely a reinforcing strut designed to stiffen the wall and to keep it in a vertical position (as explicitly mentioned in Maupas column 4, lines 64-65). Nowhere does Maupas teach a belt with two consecutive section members, much less an angle determining element mounted on these members.

The office action further states that it would have been obvious to provide "a plurality of high and low members" on the grounds that this is merely duplication of parts. Applicant submits that this is erroneous for the reasons set forth above.

The two consecutive section members as recited provide a new function and do not merely duplicate the functions of a section member of Maupas (which the examiner has not identified). To the extent that the examiner considers the block 30 to be a section member, it is noted above that Maupas specifically discloses this to be a single element.

The examiner also states that the "angle determining means" (i.e., the reinforcing strut) can be attached to a block 30 on the bottom of the wall. But that still does not show or suggest a connection between two consecutive parts of the block (which is disclosed to be a single element) or even connection between two such blocks, because the upper connection of the reinforcing strut is still in the groove 22.

The examiner's attempt to read the instant claims on the structure of Maupas is ill conceived, and applicant requests that this rejection be withdrawn.

It is submitted that this application is in condition for allowance, and an early indication thereof is respectfully requested. The examiner is invited to contact the undersigned with any outstanding issues.

All necessary extensions of time are hereby requested, even though none is believed to be required. Please charge any fee deficiency to deposit account 50-1088.

Respectfully submitted,
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